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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re]	Case No. 02-50653-ASW
]	
Guiseppe Enzo Cecconi,]	Chapter 304
]	Ancillary Proceeding
Debtor.]	
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Sarah Cecconi,]	
]	Adversary Proceeding
Plaintiff,]	No. 03-5024
]	
vs.]	
]	
Guiseppe Enzo Cecconi,]	
A.C. Spicer, Trustee in Bankruptcy]	
(under U.K. insolvency laws),]	
]	
Defendants.]	
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A.C. Spicer, Trustee in Bankruptcy]	
(under U.K. insolvency laws),]	
]	
Counter-Claimant,]	
]	
vs.]	
]	
Sarah Cecconi,]	
]	
Counter-Defendant.]	
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A.C. Spicer, Trustee in Bankruptcy]	
(under U.K. insolvency laws),]	
]	
Cross-Complainant,]	
]	
vs.]	
]	
Guiseppe Enzo Cecconi,]	
]	
Cross-Defendant.]	
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MEMORANDUM DECISION RE REQUEST FOR MONETARY SANCTIONS

1 Before the Court is the request ("Request") of A.C. Spicer,
2 Trustee in Bankruptcy (under U.K. Insolvency Laws) ("Trustee") for
3 monetary sanctions against Plaintiff Sarah Cecconi ("Plaintiff")
4 based on this Court's award of monetary sanctions for Plaintiff's
5 alteration of original evidence before trial and after Plaintiff
6 knew of Trustee's claims against her. Trustee requests sanctions
7 in the amount of \$116,373.50 for attorneys fees incurred as a
8 result of Plaintiff's alteration of evidence. Alternatively,
9 Trustee requests an award of \$136,150 representing 15% of the
10 attorneys fees incurred after the discovery of the altered evidence
11 plus attorneys fees incurred in bringing this Request. Plaintiff
12 opposes the Request and proposes a monetary sanction of \$25,000.

13 The Court took the Request under submission at the June 7, 2007
14 hearing on this matter. Trustee is represented by Mary Jo
15 Shartsis, Esq. of Shartsis, Friese & Ginsburg LLP. Plaintiff is
16 represented by Paul S. Avila, Esq. of McPharlin, Sprinkles & Thomas
17 LLP. Patric J. Kelly, Esq. of Adleson, Hess & Kelly appeared for
18 Plaintiff's husband, Enzo Cecconi ("Debtor"), at the June 7
19 hearing. This Memorandum Decision constitutes the Court's findings
20 of fact and conclusions of law, pursuant to Rule 7052 of the
21 Federal Rules of Bankruptcy Procedure.

22
23 I.

24 FACTS

25 Trustee is the trustee in Debtor's involuntary bankruptcy case
26 pending in the United Kingdom. Trustee filed an ancillary
27 proceeding under 11 U.S.C. § 304 in this Court on January 7, 2002,
28 to obtain a determination that Debtor held a community property

1 interest in the house and property located at 3190 Del Ciervo
2 Drive, Pebble Beach, California (the "Property"). Plaintiff filed
3 her Complaint to Establish Purchase Money Resulting Trust against
4 Debtor and Trustee on January 15, 2003, seeking, inter alia, a
5 determination that the Property was Plaintiff's sole and separate
6 property.

7 In the litigation, Trustee served Plaintiff with a First Set of
8 Requests for Production to Plaintiff Sarah Cecconi ("Document
9 Request") on or about April 1, 2003. In responding to the Document
10 Request, Plaintiff reviewed her financial records from her father's
11 office. Plaintiff's father had managed and directed Plaintiff's
12 financial affairs from 1980 until his death in 1997.

13 When Plaintiff collected documents to produce to Trustee,
14 Plaintiff removed her social security number, telephone number and
15 Wells Fargo Bank account number from original documents. Plaintiff
16 also removed her mother's address from Wells Fargo Bank documents.
17 Plaintiff had several conversations with her counsel, Elaine Seid,
18 Esq., before whiting out the personal information and understood
19 from those conversations that whiting out the personal information
20 was permissible. Plaintiff also removed Debtor's name from some
21 insurance documents. Plaintiff removed this information by whiting
22 out the information on the original documents.

23 Ms. Seid knew that Plaintiff had whited out the private
24 information prior to producing copies of the documents in response
25 to the Document Request. The only communication to counsel for
26 Trustee regarding the whiting out of the produced documents was a
27 statement in the formal written response to the Document Request
28

1 objecting to disclosure of Plaintiff's personal information.¹
2 Counsel for Trustee was not notified specifically of the whiting
3 out of produced documents. Plaintiff's counsel was not aware that
4 Plaintiff had whited out Debtor's name on the insurance documents
5 at the time those documents were produced to Trustee in a
6 supplemental production in January 2004.

7 On the eve of trial, Trustee brought a Motion for Evidentiary
8 Sanctions Against Adversary Plaintiff Sarah Cecconi ("Sanction
9 Motion") based on Plaintiff's alteration of certain produced
10 documents. In the Sanction Motion, Trustee requested that this
11 Court dismiss Plaintiff's claims for Plaintiff's alteration of the
12 produced documents. Alternatively, Trustee requested an order
13 deeming that Plaintiff's alteration of the produced documents is an
14 admission that the altered documents showed that Debtor was a
15 beneficial owner of the Property. Trustee also requested that
16 counsel for Plaintiff certify under penalty of perjury that
17 Plaintiff had not altered any other documents and had not failed to
18 produce any documents responsive to Trustee's discovery requests.
19 Absent such certification, Trustee requested that the Court
20 establish the adverse inference that specific documents, namely the
21 escrow instructions for the Property, contracts for architectural
22 and construction work on the Property and additional insurance
23 policies contain statements supporting the claim that Debtor and
24 Plaintiff owned the Property as community property.

25
26 ¹ The relevant statement says: "Objection is made to each request for production to the
27 extent it calls for attorney/client and/or work-product privileged information; for personal
28 information of responding party to which responding party asserts her privacy rights, including, but
not necessarily limited to P.O. Box numbers used by responding party, telephone numbers and her
social security number." Response of Sarah Cecconi to First Set of Request for Production of
Documents of A.C. Spicer at 2:11-15.

1 The Sanction Motion was argued at the start of the trial. The
2 Court asked Trustee if Trustee would like to continue the trial to
3 conduct discovery regarding the whitening out of the produced
4 documents, and noted that Trustee would be entitled to have the
5 fees for Trustee's counsel for taking such discovery paid for by
6 Plaintiff. Trustee decided not to postpone the trial to conduct
7 more discovery regarding the alteration of evidence, but rather
8 chose to address that issue through cross-examination at trial.
9 The Court carried the Sanction Motion with the trial.

10 On April 17, 2007, this Court issued its Memorandum Decision
11 After Trial where this Court found, inter alia, that dismissal of
12 Plaintiff's claims was an inappropriate remedy for Plaintiff's
13 actions as was exclusion of the evidence and having this Court draw
14 an adverse inference against Plaintiff. This Court ordered Trustee
15 to submit a request for a specific amount of fees, with evidentiary
16 support, for the Court's consideration as to the appropriate amount
17 of monetary sanctions.

18 On May 10, 2007, Trustee filed his Request. In the Request,
19 Trustee requests sanctions in the amount of \$85,223.50 based on a
20 detailed analysis of the daily time entries in applicable invoices
21 from the trial and post-trial period. According to Ms. Shartsis'
22 declaration filed in support of the Request, prior to submitting
23 the Request, Trustee's counsel reviewed all time entries in those
24 invoices to identify relevant time entries and, to the extent
25 necessary, reviewed the trial transcripts, exhibits, notes, and
26 other documents to allocate time relating to the alteration of
27 evidence within each relevant time entry. As exhibits to the
28 Request, Trustee listed redacted versions of the time entries that

1 Trustee's counsel determined contained time related to the
2 alteration of evidence. According to the declaration of Ms.
3 Shartsis filed with Trustee's reply, if a time entry did not relate
4 to the alteration of evidence, that entry was not included in the
5 exhibits. For each time entry included in the exhibits, Trustee's
6 counsel allocated that portion of time counsel believed related to
7 the alteration of evidence. Trustee's counsel asserts that this a
8 conservative allocation of the relevant time. As an alternate
9 measurement of sanctions, Trustee requests 15% of the approximately
10 \$700,000 in attorneys fees for the trial and post-trial briefing,
11 or \$105,000. Trustee has also incurred \$31,150 in attorneys fees
12 preparing the Request and replying to Plaintiff's opposition to the
13 Request. In full, Trustee requests an award of either \$116,373.50
14 or \$136,150, if the Court uses the 15% allocation.

15 Plaintiff opposes the Request on the basis that the Request for
16 \$85,223.50 in fees is unreasonable asserting that a vast majority
17 of the "relevant" fees do not relate to Plaintiff's alteration of
18 documents. Plaintiff argues that most of the fees were incurred in
19 Trustee's request for terminating or evidentiary sanctions on the
20 basis of other discovery violations Trustee alleged and strenuously
21 argued, but never substantiated. Plaintiff objects to the \$22,593
22 in fees incurred in preparing the Request on the basis that Trustee
23 failed to provide any billing records or other descriptive
24 information to support those fees, so Trustee has failed to show
25 that the fees were incurred as a direct result of Plaintiff's
26 discovery violation and those fees are reasonable.² Plaintiff

28 ² Trustee filed with his reply papers time entries to support the \$31,150 in attorneys fees requested for preparing the Request and replying to Plaintiff's opposition.

1 asserts that a reasonable award for monetary sanctions is \$25,000
2 -- which Plaintiff claims is the amount of attorneys fees that
3 Trustee reasonably incurred in discovering and clarifying the
4 nature of the altered evidence, in bringing and arguing the initial
5 Sanction Motion, plus the limited additional trial time and post-
6 trial briefing reasonably necessary to bring the largely
7 uncontested matter to conclusion.

8
9 II.

10 ANALYSIS

11 Monetary sanctions should be awarded for the amount of
12 attorneys fees that are reasonable in light of the degree of
13 Plaintiff's culpability in the alteration of documents. In re
14 Napster, Inc. Copyright Litigation, 462 F. Supp. 2d 1060, 1078
15 (N.D. Cal. 2006). Attorneys fees should be reviewed under a
16 standard of whether the fees were reasonable at the time the fees
17 were incurred and not with the benefit of hindsight. See, e.g., In
18 re Mednet, MPC, 251 B.R. 103, 108 (9th Cir. BAP 2000) (by analogy,
19 attorneys fees under Bankruptcy Code § 330 are deemed reasonable if
20 those fees were necessary or beneficial at the time incurred
21 irrespective of whether the services resulted in a material benefit
22 to the estate).

23 Both parties agree that reasonable attorneys fees include those
24 fees incurred in Trustee's investigation of the scope and extent of
25 Plaintiff's alteration of documents. Two weeks before the start of
26 trial Plaintiff acknowledged that she had altered original evidence
27 before copying that evidence and producing the copies to Trustee.
28 Trustee decided to proceed with the trial rather than postponing

1 the trial and conducting further discovery. Trustee agreed to
2 address any factual issues regarding the alteration of evidence in
3 cross-examination at trial.

4 Trustee divides the requested fees into a Pre-Trial and Trial
5 Category and a Post-Trial Category, but includes the invoices for
6 the months of August 2005 and September 2005 -- when the time
7 entries relate to the Post-Trial Brief -- in the Pre-Trial and
8 Trial Category. The Court has reviewed Trustee's "relevant" time
9 entries and has allocated the hours and fees into the following
10 categories:

Category	Hours	Fees
Pre-Trial Matters	40.0	\$13,657.50
Trial	117.2	\$39,774.50
Post-Trial Brief	46.8	\$17,525.50
Post-Trial Reply Brief	15.2	\$5,534.50
Closing Arguments	5.5	\$2,092.50
Supplemental Brief	<u>14.4</u>	<u>\$6,639.00</u>
Subtotal	239.1	\$85,223.50
Sanctions Request	43.8	\$22,593.50
Reply to Sanctions Request	<u>15.7</u>	<u>\$8,556.50</u>
Grand Total	298.6	\$116,373.50

23 The Court has thoroughly reviewed the exhibits submitted with
24 the Request and finds that all of the "relevant" time entries
25 related to pre-trial matters and the trial appear to be reasonable.
26 Specifically, the Court finds the 117.2 "relevant" hours of
27 attorney and paralegal time to address the alteration of evidence
28 issue at trial are reasonable. Trustee had wide discretion and

1 latitude at trial to determine the scope of Plaintiff's actions
2 related to discovery issues. Plaintiff's alteration of original
3 documents increased Trustee's level of scrutiny regarding all of
4 Plaintiff's actions with respect to discovery. Moreover, it was
5 difficult for Trustee to discern from the copies exactly which
6 documents had been altered and Plaintiff did not provide Trustee
7 with a list of those documents. It was Trustee who prepared a list
8 of the documents Trustee believed were altered.

9 Plaintiff asserts that the Request includes fees for time
10 incurred for Trustee's arguments that Plaintiff withheld documents
11 and failed to produce documents responsive to discovery, which
12 Plaintiff asserts is not reasonable. Trustee's counsel declares
13 that Trustee allocated only those issues related to Plaintiff's
14 alteration of original documents before the production of those
15 documents. Trustee did not provide the Court with unredacted time
16 entries nor with the full invoices, so the Court does not know the
17 full amount of time spent on post-trial categories.

18 Trustee is entitled to an award of attorneys fees that is
19 reasonable in light of Plaintiff's alteration of evidence.
20 Plaintiff blatantly altered original evidence before trial and
21 after Plaintiff knew of Trustee's claims against her, and did not
22 fully disclose that alteration to Trustee. Trustee allocates 81.9
23 hours and \$31,791.50 in fees for post-trial briefing and closing
24 arguments related to the alteration of evidence issue. The Court
25 allocates Trustee's relevant time entries as follows:

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1	Category	Hours	Fees
2	Post-Trial Brief:		
3	Ms. Shartsis (at \$485/hr)	18.1	\$8,778.50
4	Ms. Hespenheide (at \$310/hr)	27.7	\$8,587.00
5	Paralegal time (at \$160/hr)	1.0	\$160.00
6	Post-Trial Reply Brief:		
7	Ms. Shartsis (at \$485/hr)	4.7	\$2,279.50
8	Ms. Hespenheide (at \$310/hr)	10.5	\$3,255.00
9	Closing Arguments:		
10	Ms. Shartsis (at \$515/hr)	1.5	\$772.50
11	Ms. Hespenheide (at \$330/hr)	4.0	\$1,320.00
12	Supplemental Brief:		
13	Ms. Shartsis (at \$515/hr)	10.2	\$5,253.00
14	Ms. Hespenheide (at \$330/hr)	<u>4.2</u>	<u>\$1,386.00</u>
15	Total	81.9	\$31,791.50

16 Trustee had to research, brief and argue the issue of discovery
17 sanctions as a result of Plaintiff's alteration of evidence.
18 Trustee extensively quoted from the trial transcript in post-trial
19 briefing in support of these arguments, requiring a detailed review
20 of the trial transcript. This was necessary because much of the
21 questioning of Plaintiff and other witnesses regarding the
22 alteration of documents was conducted at the trial. The Court
23 finds that the \$31,791.50 in fees spent on post-trial briefing and
24 closing arguments are reasonable for all post-trial activities
25 related to Plaintiff's alteration of evidence.

26 Finally, Trustee requests \$31,150.00 in fees for 59.5 hours of
27 work preparing the Request and replying to Plaintiff's opposition.
28 Trustee's counsel submitted time entries supporting these fees with

1 the reply papers. In her opposition, Plaintiff asked this Court to
2 disallow those fees for Trustee's failure to substantiate them.
3 Plaintiff did not comment on the reasonableness of specific time
4 entries at the hearing. The Court will not disallow the fees
5 related to the Request in full, but will review those fees for
6 reasonableness. This Court finds that the fees are somewhat high
7 under the circumstances.

8 A majority of those hours were incurred by Ms. Shartsis in
9 reviewing the invoices and other documents in preparing the
10 Request. Reviewing the invoices to determine which time entries
11 were related to the alteration of evidence issue needed to be
12 undertaken by either Ms. Shartsis or Ms. Hespenheide, the two
13 counsel at the trial. Here Ms. Shartsis incurred 36.5 hours
14 preparing the Request and 15.7 hours replying to Plaintiff's
15 opposition. At a billing rate of \$545 per hour, Trustee seeks
16 \$28,449.00 in fees for Ms. Shartsis' time alone. Normally it is
17 not reasonable for the higher billing attorney to undertake such a
18 review and Trustee has provided no evidence or reason why Ms.
19 Hespenheide could not have performed the initial review of the
20 invoices and prepared a draft reply -- the manner in which work was
21 allocated in the majority of activities billed in this matter. As
22 shown below, had Ms. Hespenheide performed the initial preparation
23 of the Request and Ms. Shartsis reviewed the work, the amount of
24 fees for the preparation of the Request and the related reply would
25 have been \$24,080.00 -- \$7,070 less than the total fees currently
26 requested by Trustee:

1	Category	Hours	Fees
2	Request Preparation:		
3	Ms. Shartsis (at \$545/hr)	7.3	\$3,978.50
4	Ms. Hespenheide (at \$370/hr)	36.5	\$13,505.00
5	Reply Preparation:		
6	Ms. Shartsis (at \$545/hr)	4.5	\$2,452.50
7	Ms. Hespenheide (at \$370/hr)	<u>11.2</u>	<u>\$4,144.00</u>
8	Total	59.5	\$24,080.00

9 The Court finds no basis for Ms. Shartsis to bill her hourly rate
10 to perform work usually performed by Ms. Hespenheide in the first
11 instance, and will reduce the fees requested for the preparation of
12 the Request and the reply by \$5,000.³

14 III.

15 CONCLUSION

16 For the reasons set forth above, this Court awards Trustee
17 \$111,373.50 in monetary sanctions against Plaintiff for Plaintiff's
18 alteration of original evidence after knowing of Trustee's claims
19 against Plaintiff. Counsel for Trustee shall prepare a form of
20 order and submit it to the Court, after review by counsel for
21 Plaintiff.

23 Dated:

25 _____
ARTHUR S. WEISSBRODT
UNITED STATES BANKRUPTCY JUDGE

27 ³ If Ms. Hespenheide had performed the initial work on the Request and the reply, Ms.
28 Shartis might have reasonably charged some additional time to review Ms. Hespenheide's work and
the reply. The Court is accounting for that potential additional time by not reducing the fees for
preparation of the Request and reply by the full \$7,070 difference.

1 Court Service List

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